

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

PARALLEL NETWORKS, LLC,

Plaintiff,

v.

AEO, INC., et al.

Defendants.

Civil Action No. 6:10-CV-00275-LED

JURY TRIAL DEMANDED

**DEFENDANT PATAGONIA, INC.'S ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT**

Defendant Patagonia, Inc. (õPatagoniaö) answers the Complaint of Parallel Networks, LLC (õParallel Networksö or õPlaintiffö) as follows:

I. THE PARTIES

1. Patagonia is without knowledge or information sufficient to form a belief as to the truth of the allegations paragraph 1 and therefore denies them.

2. The allegations of paragraph 2 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

3. The allegations of paragraph 3 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

4. The allegations of paragraph 4 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

5. The allegations of paragraph 5 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

6. The allegations of paragraph 6 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

7. The allegations of paragraph 7 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

8. The allegations of paragraph 8 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

9. The allegations of paragraph 9 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

10. The allegations of paragraph 10 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

11. The allegations of paragraph 11 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

12. The allegations of paragraph 12 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

13. The allegations of paragraph 13 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

14. The allegations of paragraph 14 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

15. The allegations of paragraph 15 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

16. The allegations of paragraph 16 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

17. The allegations of paragraph 17 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

18. The allegations of paragraph 18 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

19. The allegations of paragraph 19 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

20. The allegations of paragraph 20 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

21. The allegations of paragraph 21 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

22. The allegations of paragraph 22 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

23. The allegations of paragraph 23 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

24. The allegations of paragraph 24 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

25. The allegations of paragraph 25 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

26. The allegations of paragraph 26 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

27. The allegations of paragraph 27 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

28. The allegations of paragraph 28 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

29. The allegations of paragraph 29 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

30. The allegations of paragraph 30 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

31. The allegations of paragraph 31 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

32. The allegations of paragraph 32 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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34. The allegations of paragraph 34 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

35. The allegations of paragraph 35 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

36. The allegations of paragraph 36 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

37. Patagonia admits the allegations of paragraph 37.

38. The allegations of paragraph 38 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

39. The allegations of paragraph 39 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

40. The allegations of paragraph 40 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

41. The allegations of paragraph 41 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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44. The allegations of paragraph 44 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

45. The allegations of paragraph 45 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

46. The allegations of paragraph 46 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

47. The allegations of paragraph 47 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

48. The allegations of paragraph 48 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

49. The allegations of paragraph 49 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

50. The allegations of paragraph 50 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

51. The allegations of paragraph 51 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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57. The allegations of paragraph 57 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

58. The allegations of paragraph 58 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

JURISDICTION AND VENUE

1. Patagonia admits that this action purports to bring an action arising under the patent laws of the United States, Title 35 of the United States Code. Patagonia also admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), but denies that it is committing or has committed any act of infringement alleged in the Complaint. Patagonia denies the remaining allegations of this paragraph, as they relate to Patagonia. As to the other defendants, Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

2. Patagonia admits that venue is proper under 28 U.S.C. §§ 1339(b), 1391(c) and 1400(b). Patagonia denies that it is committing or has committed any act of infringement alleged in the Complaint. Patagonia denies the remaining allegations of this paragraph, as they relate to

Patagonia. As to the other defendants, Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 6,446,111

3. Patagonia admits that the face of U.S. Patent No. 6,446,111 (the "111 patent") indicates that it is entitled to "Method and Apparatus for Client-Server Communications Using a Limited Capability Client Over a Low Speed Communications Network" and that it issued on September 3, 2002. Patagonia denies that the "111 patent was duly and legally issued.

4. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

5. Patagonia denies the allegations of paragraph 5.

6. The allegations of paragraph 6 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

7. The allegations of paragraph 7 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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61. The allegations of paragraph 61 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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67. The allegations of paragraph 67 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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102. The allegations of paragraph 102 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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104. The allegations of paragraph 104 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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146. Patagonia denies the allegations of paragraph 146.

147. Patagonia denies the allegations of paragraph 147.

148. Patagonia denies the allegations of paragraph 148.

149. Patagonia denies the allegations of paragraph 149.

150. The allegations of paragraph 150 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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232. The allegations of paragraph 232 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

233. The allegations of paragraph 233 are not directed to Patagonia, and therefore no answer is required. Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

234. Patagonia denies the allegations of paragraph 234, as they relate to Patagonia. As to the other defendants, Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

235. Patagonia denies the allegations of paragraph 235, as they relate to Patagonia. As to the other defendants, Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

236. Patagonia denies the allegations of paragraph 236, as they relate to Patagonia. As to the other defendants, Patagonia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

PRAYER FOR RELIEF

These paragraphs set forth the statement of relief requested by Plaintiff to which no response is required. To the extent an answer is required, Patagonia denies that Plaintiff is entitled to any of the requested relief and denies any such allegations.

JURY DEMAND

This paragraph sets forth Plaintiff's request for a jury trial to which no response is required. Patagonia also requests a trial by jury on all issues so triable.

AFFIRMATIVE DEFENSES

Patagonia's Affirmative Defenses are below. Patagonia reserves the right to amend its Answer to add additional Affirmative Defenses, including instances of inequitable conduct, consistent with the facts discovered in this case.

FIRST DEFENSE
(No Infringement)

237. Patagonia has not infringed, directly, contributorily, by inducement, or otherwise, literally or under the doctrine of equivalents, any valid and enforceable claim of the '111 patent and is not liable for any acts of infringement of any such claim of the '111 patent.

SECOND DEFENSE
(Patent Invalidity)

238. The claims of the '111 patent are invalid under one or more sections of Title 35 of the U.S. Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103 and/or 112.

THIRD DEFENSE
(Failure to State a Claim)

239. Upon information and belief, the Complaint, and each purported claim alleged therein, fail to state facts upon which relief can be granted against Patagonia.

FOURTH DEFENSE
(No Willful Infringement)

240. Should Patagonia be found to infringe the '111 patent, such infringement was not willful.

FIFTH DEFENSE
(Estoppel)

241. Upon information and belief, by reason of proceedings in the U.S. Patent and Trademark Office during the prosecution of the applications that resulted in the '111 patent, as shown by the file histories, and by reason of the amendment, cancellation or abandonment of claims, and the admissions and other statements made therein by or on behalf of the patentee(s), Plaintiff is estopped from claiming a construction of the '111 patent that would cause any valid, enforceable claim thereof to cover or include any method or product manufactured, used, sold, or offered for sale by Patagonia.

SIXTH DEFENSE
(Waiver, Laches and Estoppel)

242. Plaintiff's alleged claims regarding the '111 patent are barred by the doctrines of waiver, laches and/or estoppel.

COUNTERCLAIMS

Counterclaim-Plaintiff Patagonia, Inc. (öPatagoniaö), for its Counterclaims against Counterclaim-Defendant Parallel Networks, LLC (öParallel Networksö) and upon information and belief, states as follows:

THE PARTIES

243. Patagonia, Inc. is a corporation with a place of business at 259 West Santa Clara Street, Ventura, California.

244. According to paragraph 1 of its Complaint, Parallel Networks LLC (Parallel Networks or Plaintiff) is a Texas Limited Liability Company with its place of business at 100 E. Ferguson Street, Suite 602 in Tyler, Texas.

JURISDICTION AND VENUE

245. This Court has jurisdiction over the subject matter of these Counterclaims under, without limitation, 28 U.S.C. §§ 1331, 1338, 2201, and 2202, and venue for these Counterclaims is proper in this district under at least 28 U.S.C. § 1391.

246. This Court has personal jurisdiction over Parallel Networks because Parallel Networks has submitted itself to the personal jurisdiction of this Court by commencing this action.

COUNT ONE **(Declaratory Judgment of Non-Infringement of the ‘111 Patent)**

247. An actual case or controversy exists between Patagonia and Parallel Networks as to whether United States Patent No. 6,446,111 (the ‘111 patent) is not infringed by Patagonia.

248. A judicial declaration is necessary and appropriate so Patagonia may ascertain its rights regarding the ‘111 patent.

249. Patagonia has not infringed, directly, contributorily, by inducement, or otherwise, literally or under the doctrine of equivalents, any valid and enforceable claim of the ‘111 patent and is not liable for any acts of infringement of any such claim of the ‘111 patent.

COUNT TWO **(Declaratory Judgment of Invalidity of the ‘111 Patent)**

250. Patagonia restates and incorporates by reference its allegations in the previous paragraphs in these Counterclaims.

251. An actual case or controversy exists between Patagonia and Parallel Networks as to whether the claims of the ‘111 patent are invalid.

252. A judicial declaration is necessary and appropriate so Patagonia may ascertain its rights as to whether the claims of the '111 patent are invalid.

253. The claims of the '111 patent are invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more sections of Title 35 of the U.S. Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103 and/or 112.

PRAYER FOR RELIEF

WHEREFORE, Patagonia, Inc. prays for judgment as follows:

- a. A judgment dismissing with prejudice Parallel Networks' Complaint against Patagonia and ordering that Parallel Networks take nothing by its complaint;
- b. A judgment in favor of Patagonia on all of its Counterclaims;
- c. A declaration that Patagonia has not infringed directly, contributorily, by inducement, or otherwise, literally or under the doctrine of equivalents, any valid and enforceable claim of the '111 patent and is not liable for any acts of infringement of any such claim of the '111 patent;
- d. A declaration that the claims of the '111 patent are invalid;
- e. An award of costs to Patagonia pursuant to 35 U.S.C. § 284;
- f. A finding that this is an exceptional case pursuant to 35 U.S.C. § 285 and an award to Patagonia of its reasonable attorney fees; and
- g. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Patagonia hereby demands a trial by jury on all issues.

Dated: July 29, 2010

Respectfully submitted,

By: /s/ Kenneth J. Jurek
J. Thad Heartfield (Texas Bar No. 09346800)
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Beaumont, Texas 77706
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Fax: (409) 866-5789
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Kenneth J. Jurek
John G. Bisbikis
Brett E. Bachtell
McDermott Will & Emery LLP
227 West Monroe Street
Chicago, Illinois 60606
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Fax: (312) 984-7700
E-mail: kjurek@mwe.com
E-mail: jbisbikis@mwe.com
E-mail: bbachtell@mwe.com

Attorneys for Defendant Patagonia, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on July 29, 2010.

/s/ Kenneth J. Jurek

Kenneth J. Jurek